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7 Otto 365
Oct. 7. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 510.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

CHARLES MOLLER AND PAUL E. VACQUEREL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 11, 1877.

1878.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Charles Moller & Paul E. Vacquerel, plaintiffs, & Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, as by his complaint appear': We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-seven, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the sixteenth day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] JOHN I. DAVENPORT.

The foregoing writ is hereby allowed.

SAM'L BLATCHFORD.

2 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Charles Moller & Paul E. Vacquerel, defendants in error. Writ of error. E No. 2, p. 30. Filed June 16, 1877.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to twenty-three inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, against Charles Moller & Paul E. Vacquerel, defendants in error, as the same remain of record and on file in said office.

3

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 25th day of September, in the year of our Lord one thousand eight hundred and and seventy-seven, and of the Independence of the said United States the one hundred and second.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

4 United States circuit court for the southern district of New York.

Pleas before the justices of the United States circuit court, in the second circuit, in the city of New York, in and for the southern district of New York, of the October term, in the year one thousand eight hundred and seventy-five.

Witness Hon. Ward Hunt, justice.

JOHN I. DAVENPORT, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that on the seventh day of February, 1876, being as yet of the October term, in the year 1875, before the justices of the United States circuit court, in the second circuit, at the city of New York, came Charles Moller and Paul E. Vacquerel, by H. J. Begley, their attorney, and bring into the said court, before the aforesaid justices thereof
5 now here, their certain bill against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case upon premises; which said bill follows in these words, that is to say:

THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York, in the second circuit, on the seventh day of February, in the year of our Lord one thousand eight hundred and seventy-six.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles Moller and Paul E. Vacquerel, plaintiffs in this suit, came here into court, and by H. J. Begley, their attorney, suggest and give the court now here to understand and be informed that heretofore, to wit, on the thirteenth day of September last past, an action was commenced in the superior court of the city of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of the said
6 plaintiffs against Chester A. Arthur, the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said superior court on the same day. That the defendants afterwards, by George Bliss, esq., his attorney, duly appeared in said action, and such proceedings were thereupon had, that afterwards, and on this seventh day of February, in the year of our Lord one thousand eight hundred and seventy-six, the said action was, in due form of law, removed by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided, and the clerk of the said superior court did thereupon return the said writ with the summons aforesaid, and did file the same in this court according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial in this action
7 against the defendant be continued in this court.

And the said plaintiffs accordingly, by H. J. Begley, their attorney, complain of the defendant in this suit, being in custody, &c., of a plea of trespass on the case for promises, for that whereas the said defendant heretofore, to wit, on the day of the date of this declaration, to wit, at the city of New York, in the district aforesaid, was indebted to the said plaintiffs in the sum of one hundred and forty-five and $\frac{00}{100}$ dollars lawful money of the United States of America, for duties on cer-

tain merchandise, to wit, prints styled decalcomania, imported into and entered at the collection-district of the United States for the city of New York on or about the following dates, to wit: June 28, July 20, August 24, 1874, and February 16, 1875, in the following ships or vessels, to wit, the steamers American, Oder, Weser, Reckar, and Pereire, from Bremen and Havre, unlawfully demanded, exacted, and received, at the city of New York aforesaid, in the district aforesaid, by the said
8 defendant, then collector of the customs for the district aforesaid, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest in writing in due form of law; and being so indebted, he, the said defendant, in consideration thereof, afterward, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the sum of money above mentioned, when he, the said defendant, should be thereunto afterwards requested.

And whereas, also the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of one thousand dollars lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the
9 special instance and request of the said defendant, and for other money by the said plaintiffs before that time paid, laid out and expended for the said defendant, and at the like request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money in this court mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant (although often afterwards requested so to do) has not as yet paid the said several sums of money above mentioned, or any or either of them or any part thereof to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs the said defendant has hitherto altogether refused and still does
10 refuse, to the damage of the said plaintiffs of one thousand dollars, and therefore the said plaintiffs bring suit, &c.

And the said defendant, by George Bliss, esq., his attorney, comes and defends the wrong and injury, &c., and says that he did not undertake and promise in manner and form as the said plaintiff has above thereof declared against him, the said defendant, and of this he puts himself upon the country, &c. Therefore the issue above joined is ordered by the said court to be tried at a circuit court appointed to be held at the City Hall of the city of New York, on the third Monday of October, in the year one thousand eight hundred and seventy-six, and now, at this day, to wit, the fourth day of December, being as yet of the said October term, before the said justices at the United States court-house, in the said city of New York, came the said parties by their attorney aforesaid, and the said circuit judge before whom the said issue was tried, has sent hither his record had before him in these words, to wit:
11 Afterwards, that is to say on the day and at the place within contained, before W. J. Wallace, esq., judge of the said circuit court, came as well the within named Charles Moller and Paul E. Vacquerel, plaintiffs, as the said Chester A. Arthur, defendant, by their

respective attorneys within mentioned, and the jurors of the jury whereof mention is within made, being summoned also came, who to speak the truth in the matters within contained being chosen, tried, and sworn upon their oaths, do say that the said defendant did undertake and promise in manner and form as the said plaintiff has above thereof complained against him, and they assess the damages of the said plaintiffs by reason of the premises at the sum of eighty dollars in cc ⁿ and twenty $\frac{43}{100}$ dollars in currency of the United States over and above their costs and charges by them about their suit in this behalf expended,
and for those costs and charges the sum of fifty-three $\frac{53}{100}$ dol-
12 lars. Therefore it is considered that the said Charles Moller and Paul E. Vacquerel, plaintiffs, recover against Chester A. Arthur, defendant, their damages aforesaid, by the jurors aforesaid in form aforesaid found, and also their costs and charges of increase by the court, now here adjudged to the said plaintiffs with their assent, which said damages, costs, and charges in the whole amount to eighty dollars in gold coin of the United States and seventy-three 53-100 dollars in currency.

Judgment signed this 7th day of June, 1877.

M. DEUEL,
Dep'y Clerk.

(Endorsed:) U. S. circuit court. Charles Moller et al. vs. Chester A. Arthur. Judgment roll. H. J. Begley Pl'ffs att'y. U. S. circuit court. Filed June 7, 1877. John I. Davenport, clerk.

13,14 *Bill of exceptions.*

Circuit court of the United States for the southern district of New York.

CHARLES MOLLER AND AL. }
vs. }
CHESTER A. ARTHUR. }

Afterwards, to wit, on the 4th day of December, 1876, at a stated term of this court, begun and holden at the city of New York, to wit, on the third Monday of October, 1876, before the Hon. W. J. Wallace, district judge of the United States for the northern district of New York, sitting as circuit judge, the aforesaid issue so joined as between the said parties as aforesaid, as by the record more fully appears, came on to be tried by a jury duly empanelled and sworn for that purpose, the said plaintiffs being represented by H. J. Begly, esquire, and the said defendant by R. M. Sherman and H. T. Sly, esqs.

And in the course of the trial the said counsel for the defendant did take and allege sundry exceptions to the rulings and charges of the
court and to the refusal of the court to give instructions to the
15 jury as then and there prayed for by them, which said exceptions are hereinafter severally set forth.

On the trial the following facts appeared: It was shown by the plaintiffs that they imported into the port of New York certain goods described in the invoices and entries as decalcomanie.

It was admitted that the defendant exacted duty upon such goods at the rate of 35 per cent. less 10 per cent., and that the plaintiffs duly and in time protested against the exaction of the excess of duty; appealed to the Secretary of the Treasury from the decision of defendant, and on the confirmation of the defendants' decision brought this action within the time required by law. It was also admitted that if the plaint-

iffs were entitled to receive anything, they were entitled to receive $80 in gold, and $20.63 in currency.

The plaintiffs proved that the goods in question were chromo lithographs, consisting of landscapes, scenery, and other figures printed from oil-stones onto paper. There is one color printed on top of the other until the picture is finished, the same as chromo lithographs
16 are printed. The only difference is that a chromo is printed positive, and these pictures are printed mostly negative. That they are most generally known by the term decalcomaine, sometimes as decalcomaine pictures, and were known in trade and commerce as prints, and sometimes as transfer-prints. It further appeared on the cross-examination of the plaintiffs' witnesses that these articles are sometimes called prints, but not to any great extent, and are sold mostly to stationers, booksellers, apothecaries, druggists, and retail druggists out in the country; that they are used in imitation of oil painting, and for transferring to the surface of articles, such as vases or glass, by slightly moistening the surface of the picture and laying it on the object, and then saturating the back of the picture with water, whereby the paper becomes disengaged from the picture and can be readily removed, and that sometimes they are transferred to canvass, and sometimes used in scrapbooks and albums. That in fact they are used for almost any purpose of ornamentation to which painting by hand can be applied.
17 That there are no letters constituting language upon the face of the paper. That they are used peculiarly for ornament as pictures. That they are made by means of lithographic stones, and printed from the stones successively one after the other, according to the number of colors; the difference between them and a chromo lithograph being that a chromo is printed positive while decalcomanie is printed positive and negative, but chiefly negative, but they are printed from the same stones. After the picture is printed it is sometimes covered with a metal leaf, which is also put on by the process of printing; a sizing is printed on from the stone, the metal leaf being placed on top of the sizing by hand, it being too brittle to be placed on by the roller, and it is run through the press which prints the metal leaf on top of the picture. The witness said, "I call that printing just like the other." "That decalcomaine pictures, whether plain or covered with metal leaf, are entirely printed by process of lithographic printing, and in exactly the same way as ordinary lithographs."

The plaintiffs' evidence being closed, the defendant offered no testimony, and moved the court to direct the jury to find a verdict for
18 the defendant, which motion the court denied, to which denial and refusal the defendant then and there duly accepted.

The defendant's counsel thereupon requested the court to submit to the jury the following question of fact: Whether in their imported state these decalcomaine pictures are "printed matter" as those words are commonly used in language, and that they must find a verdict for the defendant if these pictures are not such "printed matter," which the court refused to do, and defendant's counsel duly excepted to such refusal.

The defendant's counsel thereupon requested the court to submit to the jury the following question of fact: Whether these decalcomaine pictures are manufactures of paper, and that they must find a verdict for the defendant if these pictures are manufactures of paper; which the court refused to do, and defendant's counsel duly excepted to such refusal.

The plaintiffs' counsel thereupon requested the court to direct the

jury to find a verdict for the plaintiffs, and the court thereupon directed the jury to find a verdict for the plaintiffs, to which direction the defendant's counsel duly excepted.

19 And because none of the said exceptions so offered and made to the opinion, instructions, and decisions of the court, do appear upon the record of the said trial, therefore, on the prayer of the said defendant, by his counsel, the said judge has to this bill of exceptions put his seal nunc pro tunc, as of the 4th day of December.

(Signed) W'M J. WALLACE,
U. S. District Judge.

(Endorsed:) U. S. circuit court, southern district of New York. Charles Moller & al. vs. Chester A. Arthur. Bill of exceptions. U. S. circuit court. Filed June 1, 1871. John I. Davenport, clerk.

20 In the Supreme Court of the United States.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
vs.
CHARLES MOLLER AND PAUL E. VACQUEREL,
defendants in error.

Afterwards, to wit, on the second Monday of October, 1877, before the justices of the Supreme Court of the United States, at the city of Washington, comes the said Chester A. Arthur, plaintiff in error, by his attorney aforesaid, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid there is manifest error in this, to wit: that the court denied the motion of the defendant's counsel to direct the jury to find a verdict for the defendant, whereas according to the law of the land and the testimony, the court should have directed a verdict for the defendant; also, that the court refused the request of the defendant's counsel to submit to the jury the question of fact first

21 requested to be submitted; whereas, according to the law of the land and the testimony, the court should have granted said request; also, that the court refused the request of defendant's counsel to submit to the jury the question of fact secondly requested to be so submitted, and the instruction therewith requested; whereas, according to the law of the land and the testimony, the court should have granted said request; also, that the court directed a verdict for the plaintiffs; whereas, according to the law of the land, the court should have left to the jury each of the several questions of fact requested by said defendant's counsel to be left to them, with the instructions by him requested in connection therewith in manner and form as requested. And this the said plaintiff in error is ready to verify; wherefore he prays that the judgment aforesaid may be revoked, annulled, and altogether held for nothing; and that he may be restored to all things which he has lost by occasion of the judgment aforesaid, &c.

STEWART L. WOODFORD,
Attorney for Plaintiff in Error.

R. W. S.

(Endorsed:) Supreme Court of the United States. Chester A. Arthur, plaintiff in error, vs. Charles Moller & Paul E. Vacquerel, defendants in error. Assignment of error. Stewart L. Woodford, attorney for plaintiff in error. Filed June 21, 1877.

22 UNITED STATES OF AMERICA, *ss:*

To Charles Moller & Paul E. Vacquerel, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and seventy-seven, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, this sixteenth day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

SAM'L BLATCHFORD.

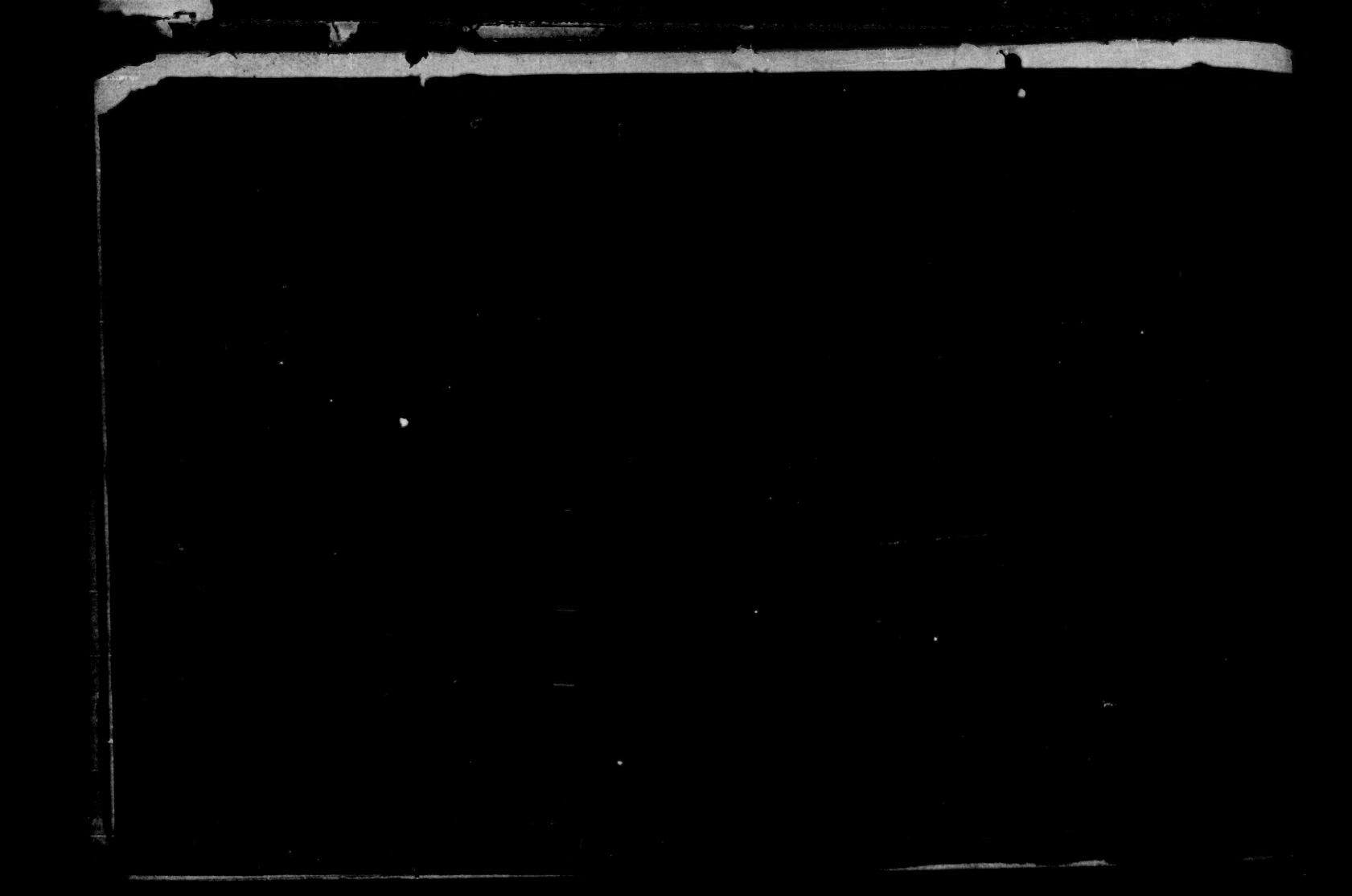
(Indorsed:) 4447. U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Charles Moller & Paul E. Vaquerel, defendants in error. Citation. E. & O. D., No. 2, p. 30.

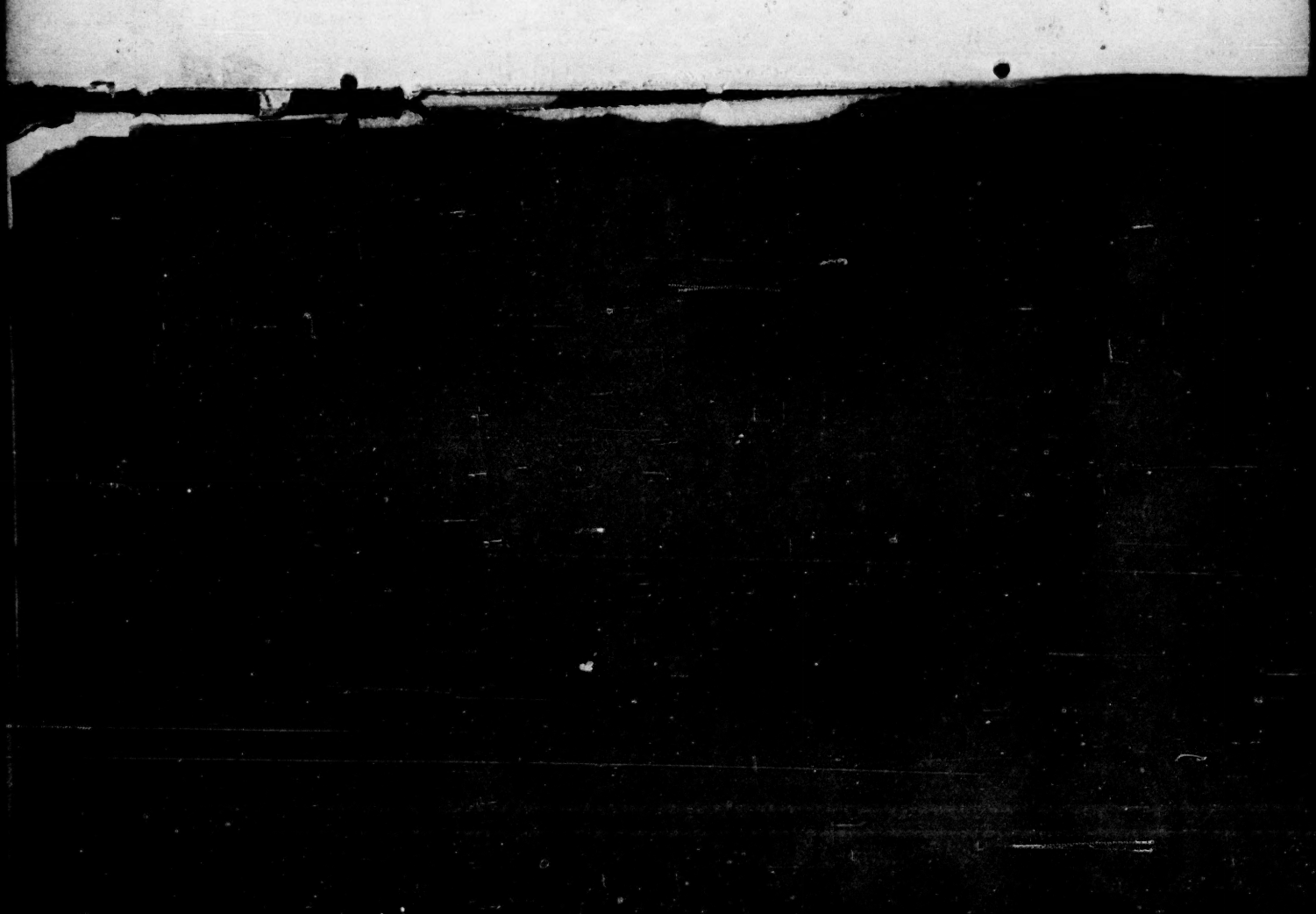
Service of a copy of the within citation is hereby admitted.
New York, June 16, 1877.

H. J. BEGLY,
Attorney for Defendants in Error.

Filed June 16, 1877.

(Indorsement on cover:) No. 510. Chester A. Arthur, collector of the port of New York, pl'ff in error, vs. Charles Moller and Paul E. Vacquerel. S. New York C. C. U. S. Filed 11th October, 1877.





In the Supreme Court of the United States.

OCTOBER TERM, 1878.

CHESTER A. ARTHUR, COLLECTOR,
v.
CHARLES MOLLER AND ANOTHER. } No. 510.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

PLAINTIFF'S BRIEF.

STATEMENT.

On the trial the following facts appeared:

It was shown by the plaintiffs below that they imported into the port of New York certain goods described in the invoices and entries as decalcomaine.

It was admitted that the defendant, then collector of customs at that port, exacted duty upon such goods at the rate of 35 per cent., less 10 per cent., and that the plaintiffs duly and in time protested against the exaction of the excess of duty, appealed to the Secretary of the Treasury from the decision of defendant, and on the confirmation of the defendant's decision brought this action within the time required by law. It was also admitted that if the plaintiffs were entitled to receive

anything, they were entitled to receive $80 in gold and $20.63 in currency.

The plaintiffs proved that the goods in question were chromo-lithographs, consisting of landscapes, scenery, and other figures, printed from oil-stones upon paper. There is one color printed on top of the other until the picture is finished, the same as chromo-lithographs are printed.

The only difference is that a chromo is printed positive and these pictures are printed mostly negative; that they are most generally known by the term decalcomaine, sometimes as decalcomaine pictures, and were known in trade and commerce as prints, and sometimes as transfer-prints. It further appeared, on the cross-examination of the plaintiffs' witnesses, that these articles are sometimes called prints, but not to any great extent, and are sold mostly to stationers, booksellers, apothecaries, druggists, and retail druggists out in the country; that they are used in imitation of oil-painting, and for transferring to the surface of articles such as vases or glass, by slightly moistening the surface of the picture and laying it on the object, and then saturating the back of the picture with water, whereby the paper becomes disengaged from the picture, and can be readily removed; and that sometimes they are transferred to anvas, and sometimes used in scrap-books and albums.

That, in fact, they are used for almost any purpose of ornamentation to which painting by hand can be applied; that there are no letters constituting language upon the face of the paper; that they are used peculiarly for ornament as pictures.

That they are made by means of lithographic stones, and printed from the stones successively one after the

other, according to the number of colors; the difference between them and a chromo-lithograph being that a chromo is printed positive, while decalcomaine is printed positive and negative, but chiefly negative, but they are printed from the same stones.

After the picture is printed, it is sometimes covered with a metal leaf, which is also put on by the process of printing; a sizing is printed on from the stone, the metal leaf being placed on top of the sizing by hand, it being too brittle to be placed on by the roller, and it is run through the press, which prints the metal leaf on top of the picture. The witness said, "I call that printing just like the other." "That decalcomaine pictures, whether plain or covered with metal leaf, are entirely printed by process of lithographic printing, and in exactly the same way as in ordinary lithographs."

The plaintiffs' evidence being closed, the defendant offered no testimony, and moved the court to direct the jury to find a verdict for the defendant, which motion the court denied, to which denial and refusal the defendant then and there duly excepted.

The defendant's counsel thereupon requested the court to submit to the jury the following question of fact: Whether these decalcomaine pictures are manufactures of paper, and that they must find a verdict for the defendant if these pictures are manufactures of paper; which the court refused to do, and defendant's counsel duly excepted to such refusal.

The plaintiffs' counsel thereupon requested the court to direct the jury to find a verdict for the plaintiffs, and the court thereupon directed the jury to find a verdict for the plaintiffs, to which direction the defendant's counsel duly excepted. (Record, pp. 4, bottom, to 6, top.)

ASSIGNMENT OF ERRORS.

The plaintiff in error now assigns for error the refusal to give the several above-mentioned instructions requested by his counsel, and the giving of the instruction requested by the present defendants, that the verdict should be in their favor; and also assigns for error the judgment given upon the verdict so rendered.

BRIEF.

Under the acts of March 2, 1861, c. 68, § 22, a duty of thirty per cent. was imposed on "manufactures of paper, or of which paper is a component material, not otherwise provided for." (12 Stats., 191, top, and 192, line 41.) Five per cent. additional was put on by the act of July 14, 1862, c. 163, § 13; *Id.*, 557, top. The Revised Statutes, p. 462, sec. 2503, provide that ninety per cent. only of the rates named in the schedules shall be levied upon the articles named, among which is found "all paper and manufactures of paper, excepting unsized printing-paper, books, and other printed matter, and excepting sized or glued paper, suitable only for printing-paper." (R. S., 463, top.) Schedule M, entitled "Sundries," includes "Paper—sized or glued, suitable only for printing-paper, twenty-five per centum ad valorem; printing, unsized, used for books and newspapers exclusively, twenty per centum ad valorem; manufactures of, or of which paper is a component material not otherwise provided for, thirty-five per centum ad valorem." (R. S., 483, near top, sec. 2504.) Under this last-quoted proviso, the plaintiff in error assessed the importations in question as "manufactures of paper, &c., not otherwise pro-

vided for," at ninety per cent. of thirty-five per centum ad valorem. (Record, 4, bottom.)

In this same Schedule M, sec. 2504, of the Revised Statutes, page 477, middle, is found this language: "Books, periodicals, pamphlets, blank books, bound or unbound, and *all printed matter*, engravings, bound or unbound, illustrated books and papers, and maps and charts, twenty-five per centum ad valorem."

This phraseology is brought forward from the act of June 30, 1864, c. 171, § 12 (13 Stats., 213, bottom), and under it the defendants in error claimed to enter their goods as printed matter, paying ninety per cent. of twenty-five per centum.

Though in one sense these decalcomaine pictures may be said to be printed in the course of their manufacture, they are not what is ordinarily known as "printed matter." The process is not one by which the work is done at a single impression (like engravings, after the plate is prepared), but sometimes thirty or forty stones are employed, requiring a distinct impression for each color; and the result is a picture mechanically produced or manufactured out of paper—or of which that is an essential component—instead of a print which the press can throw off complete at every impression.

It is not perceived how elaborate discussion can present the issue any more clearly to the court.

EDWIN B. SMITH,
Assistant Attorney-General.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 510.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,

vs.

CHARLES MOLLER ET AL., DEFENDANTS IN ERROR.

Brief and Argument of Defendants in Error.

BRIEF.

THE FACTS.

The material facts of the case are as follows:

Importation.—The defendants in error imported into the port of New York certain pictures described in the invoices and entries as "Decalcomanie" (*fol.* 15).

Exaction.—The plaintiff in error (then Collector of Customs) exacted duties on said pictures as manufactures of paper not otherwise provided for, at the rate of thirty-five per centum *ad valorem*, less ten per centum (*fol.* 15).

The importers complied with all the requirements of law with respect to protest, appeal, bringing suit, &c., &c. (*fol.* 15).

The goods.—The pictures in question are chromo-lithographs, consisting of landscapes, scenery, and other figures (*fol.* 15).

Their name.—The specific name of these pictures is "Decalcomanie," or "Decalcomanie Pictures" (*fol.* 16).

Classification in trade and commerce.—The pictures are known in trade and commerce as "prints" and "transfer prints" (*fol.* 16). Are sometimes called by that name, but not to any great extent; their specific name, "Decalcomanie," being most generally applied (*fol.* 16).

Their production.—These pictures are printed from stones on to paper (*fol.* 15); they are printed both positive* and negative,† but chiefly negative (*fol.* 16). After the picture is printed, it is sometimes covered with a metal leaf, which is also put on by the process of printing (*fol.* 17).

These pictures, whether plain or covered with metal leaf, are ENTIRELY PRINTED (*fol.* 17).

Their use.—They are used peculiarly for ornament as pictures (*fol.* 17), in imitation of oil paintings, being sometimes transferred to canvas (*fol.* 16), sometimes to glass (*fol.* 16), sometimes to scrap books and albums (*fol.* 16), sometimes to the surface of articles, such as vases (*fol.* 16).

The alleged error.—The plaintiffs below having proved the above facts, rested. Whereupon the defendant offered no testimony, but moved the court for a verdict. And this being denied, prayed the court to submit to the jury two questions: 1st. Whether these pictures were "printed matter;" and 2d. Whether they were manufactures of paper.

The court denied both of these requests, and directed a verdict for the plaintiffs (*fol.* 18).

THE LAW.

PART I.

These pictures being "entirely printed," are included within the terms "all printed matter."

First Point.

The term "printed matter," in its strict etymological interpretation, and in its ordinary and daily use, is not limited to printed *language*, or matter printed with *types*, but includes every variety of subject, and every process of printing.

Webster's Dictionary, *print*, v; *plates*, n; *lithograph*, n; *matter*, n.
McElrath's Commercial Dictionary, *prints*, *lithograph*.
Homan's Cyclopœdia of Commerce, *prints*.

Second Point.

When the lawmaker uses language of no doubtful significance, it must be taken in its plain and ordinary meaning. There is then no room for interpretation.

Sedgwick on Stat. & Const. Law, p. 260.
1 Kent, Com., pp. 462, 465.
Dwarris on Stats., pp. 693-702, 703.
U. S. *v.* Breed, 1 Sumner, 159.
U. S. *v.* Warner, 4 McLean, 468.

Third Point.

When the words used are general limitations or restrictions not absolutely called for by the sense, are not to be tacked on.

Faw *v.* Marsteller, 2 Ch., 10.
U. S. *v.* Coombs, 15 Pet., 72.
Lottimer *v.* Smythe, 17 Int. Rev. Rec., 12.
Arthur *v.* Morrison, 6 Otto, p. 108.
Dwarris on Stats., p. 773.

PART II.

Admitting that the term "printed matter" is of doubtful significance, an application of the usual tests resorted to by the courts in the interpretation of doubtful statutes will bring within the term all things printed, whether from stones, wood, copper, steel, or types, and whether they be reading matter, or figures, likenesses or other representations.

First Point.

(*A.*) In the construction of a doubtful statute, long continued usage and the interpretation put on it by the officers charged with its administration will have a controlling influence.

1 Kent, Com., 464.
Dwarris on Stats., 693.
Sheppard *v.* Gosnold, Vaugh, 169.
U. S. *v.* The Recorder, 1 Bl., C. C. 218.
Stewart *v.* Laird, 1 Ch., 299.
Peabody *v.* Stark, 16 Wall., 240.
Bank of U. S. *v.* Halstead, 10 Wheat., 51.
Edwards, Lessee, *v.* Darby, 12 Ib., 206.
U. S. *v.* State Bank of N. C., 6 Pet., 34.
Union Ins. Co. *v.* Hoge, 21 How., 35.
10 Opin. Atty. Genl. p. 55.

(*B.*) From the time the term "printed matter" was first introduced into the tariff (March 2, 1861), the Secretary of the Treasury has uniformly and repeatedly interpreted it in the strict and unlimited grammatical sense of the two words.

Official synopsis Treasury Decisions, viz:
Letter to Collector at New York, Oct. 9, 1861.
" " Boston, Jan'y 19, 1869.
" " New York, May 23, 1869.
" " " Oct. 15, 1870.
" " " Aug. 30, 1872.
" " " March 7, 1873.
" Appraiser at New York, Sept. 17, 1874.
" Collector of New York, Nov. 17, 1874.

Second Point.

After the ruling of Oct 9, 1861, and subsequent rulings, Congress enacted with especial reference to these rulings, thereby recognizing and adopting the construction placed by the Secretary of the Treasury on the term "printed matter,"

July 1, 1862, ch. 119, sec. 75 (12 Stat., 466).
June 30, 1864, ch. 173, sec. 94 (13 Stat., 267).
" " ch. 171, " 13 (13 Stat., 213).
July 13, 1866, ch. 154, sec. 10 (14 Stat., 149, top line).

Third Point.

In the construction of a doubtful statute, and especially of a revenue law, purporting to provide for articles in *classes*, the courts will consider the fitness of things, and will place an article with other articles of a kindred nature, rather than with articles to which it bears no resemblance.

Adams *v.* Bancroft, 3 Sumn., 385.
Arthur *v.* Susfield, 6 Otto, *p.* 128.

Fourth Point.

If the terms used in a revenue act are of doubtful interpretation, so as to admit of ambiguity, the benefit thereof inures to the citizen.

Hubbard *v.* Johnston, 3 Taunt., 177.
Adams *v.* Bancroft (*supra*).
Sewell *v.* Jones, 9 Pick., 412.
U. S. *v.* Wigglesworth, 2 Story, 373.
Hoyt *v.* Hall (Ex. Docs., 1 Sept., 26th Congress, Vol. 2, 1839–'40, Doc. No. 44, *p.* 33).

PART III.

The Alleged Errors.

First Point.

(*A.*) There being no disputed fact in the case, it was not error to take it from the jury.

Toland *v.* Sprague, 12 Pet., 300.
Hendrick *v.* Lindsay, 3 Otto, 143.
Schuchardt *v.* Allen, 1 Wall., 369.
Improvement Co. *v.* Munson, 14 Wall., 448.
Wiggins *v.* Burkham, 10 Wall., 132.
The People *v.* Crook, 4 Seld., 75.

(*B.*) The plaintiff in error will not be allowed in this court to sift the record for a mere scintilla of evidence on which the jury *might* have passed. He could do so under the old decisions, but the later rulings are more reasonable.

Commissioners of Marion Co. *v.* Clark, 4 Otto, 278.
Improvement Co. *v.* Munson (*supra*).

Second Point.

The ruling of the court in favor of the plaintiff was correct.

(*A.*) The defendants' refusal to produce proof on the trial was equivalent to a demurrer to the evidence.

Parks *v.* Ross, 11 How., 362.

(*B.*) A demurrer to the evidence admits not only the truth of the facts testified to, but every other fact that may reasonably be inferred therefrom.

Parks *v.* Ross (*supra*).
Thornton *v.* Bank of Washington, 3 Pet., 36.
Chinoweth *v.* Haskell's Lessee, 3 Pet., 92.
U. S. Bank *v.* Jones, 11 Wheat., 171.
Pawling *v.* U. S., 4 C., 219.

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ARGUMENT

Preliminary.—This is one of a class of causes brought to test the legality of the action of the plaintiff in error in exacting duties on various printed pictures, as "manufactures of paper," at the rate of 35% *ad valorem.*

They are lithographs or prints from a stone. Their specific names are various; their mode of production and uses are identical; they are lithographic pictures. The specific name of the pictures in the present cause is "Decalcomanie."

The main effort of the defendants in error, in this argument, will be to show that these pictures came within the designation of "all printed matter" dutiable at 25%, under section 2,504 of the Revised Statutes, Schedule M, for the reason that such has been the ruling, for a long course of years, of the officers appointed to interpret and administer the law, and that the legislation of Congress indicates that the law-maker had such rulings in view, and adopted that interpretation in the enactment of subsequent statutes, not, however, waiving the point, but always maintaining that there is sufficient evidence upon the record that these pictures come within the specific designation of "engravings" dutiable at the same rate of 25%.

The facts of the case are sufficiently set forth in the defendants' brief.

The full text of the paragraph of the Revised Statutes, under which the duty of 35% was assessed by the Collector (R. S., Tit. 33, § 2,504, Schedule M), is as follows:

> "Paper * * manufactures of, or of which paper is a component material, not otherwise provided for, * * sheathing paper, * * paper boxes and all other fancy boxes, * * paper envelopes, * * paper hangings and paper for screens or fireboards, * * paper antiquarian, demi, drawing, elephant, foolscap, imperial, letter, and all other paper not otherwise provided for." * *

The provision under which the importers claim these pictures were liable to duty (same section and schedule) is as follows:

> "Books, periodicals, pamphlets, blank books, bound and unbound, and all printed matter, engravings, bound and unbound, illustrated books and papers, and maps and charts."

PART I.

First Point.

The meaning of "printed matter" is well defined.—If these pictures come within the specific designation of "all printed matter," then the provisions for "manufactures of paper not otherwise provided for" cannot apply to them. It is, therefore important to ascertain whether the term "printed matter" has a well defined meaning in language, and what that meaning is.

Webster defines "to *print*":

> "To take or form letters, characters or figures, on paper, "cloth or other material, by impression. Thus letters are "taken on paper by impressing it on types blackened with ink. "* * The rolling-press is employed to take prints or impres- "sions from plates. Thus we say, to *print* books, to *print* "calico, to *print* tunes, music, likenesses, &c."

He defines the noun—

> "Any line, character or figure, or indentation of any form, "made by the pressure of one body or thing on another."
> "Plates For copper-plates, *printed* representations or impres- "sions from an engraved plate."
> "Lithograph. A print from a drawing on stone.
> "Printing *n.* The act, art or practice of impressing letters, "*characters*, or *figures*.
> "Engraving, 2. A printing, an impression from an en- "graved plate.
> "*Prints;* in *the plural*, engravings."

McElrath's Commercial Dictionary—

> "Prints * * impressions on paper, or engravings on "copper, steel, wood, or stone, representing some particular "subject or composition, and which may be either colored or "uncolored.
> "Lithographs, pictures or designs printed on paper from "the lithographic stone, and on which they are traced or "engraved. Both when plain and when printed in colors "they are commercially regarded as engravings."

Homans' Encyclopedia of Commerce—

> "Prints; impressions on paper or some substance, of en- "gravings on copper, steel, wood, *stone*, etc., representing some "particular subject or composition. Prints, like painting, em- "brace every variety of subject, but differ very widely in the "manner in which they are engraved."

The meaning, therefore, of *printing*, is not doubtful. It is not inary language restricted to impressions from types, or to reading

matter, or to any particular process, but includes every process of printing, as well as every variety of subject. It includes everything, whether words, figures or likenesses, that is produced on paper or other substance by impression. But an argument on this point seems superfluous, since it appears by the record that these pictures are "entirely printed" (*folio* 17).

Next; as to the definition of *matter*—

There is hardly a word in the English language having so wide a range of meaning. It applies equally to substance and to the process of thought, to the workings of the mind and their results. In its application to the latter, Webster defines its meaning—

> "Subject; thing treated; that about which we write or "speak; that which employs thought or excites emotion."

So that, in describing these pictures by the process of their production, it would be more proper to call them "printed matter," than "printed goods," "printed articles." Calicoes and the like are printed goods; but pictures are not—they are "subjects," "matters."

These pictures, therefore, are included within the designation of "printed matter," according to the plain and ordinary meaning of that term.

Second Point.

Words to be taken in their plain and ordinary meaning.—Congress, therefore, having employed language of no doubtful significance, it must be construed in its plain and ordinary meaning. This is the rule laid down by all writers on the subject of construction of statutes.

Sedgwick on Statutory and Constitutional Law, p. 260, says: "The rules which we have been thus far considering relate to ambiguity and contradiction in regard to the general scope and purport of a statute; but serious questions may arise in regard to single words, and with reference to the precise meaning of the language used. The rule in regard to this is expressed in the maxim, *a verbis legis non est recedendum*—the meaning of which is, that statutes are to be read according to the natural and obvious import of their language. In an early case the judges said: "They ought not to make any construction against the express letter of the statute, for nothing can so express the meaning of the makers of an act, as their own direct words; for *index animi sermo*." The rule is well expressed by Parke, B., in the English Exchequer: "The rule which the courts have constantly acted on of late late years, in construing Acts of Parliament, or other instruments, is to take their words in their ordinary grammatical sense, unless such a construction would be

obviously repugnant to the intention of the framers of the instrument or would lead to some other inconvenience or absurdity. The current of authority at the present day, says the Supreme Court of New York, is in favor of reading statutes according to the natural and most obvious import of the language, without resorting to subtle and forced constructions, for the purpose of either limiting or extending their operation."

1 Kent's Commentaries, p. 462—

"The words of a statute, if of common use, are to be taken in their natural, plain, obvious, and ordinary signification and import."

Ibid., 465—

"They (remedial statutes) are construed liberally and *ultra*, but not *contra the strict letter.*"

Dwarris on Statutes, 693—

"In the exposition of a statute, then, the leading clue to the construction to be made, is the intention of the legislator, and that may be discovered from different signs. As a primary rule, it is to be collected from the words."

Ibid., p. 702—

"The words of a statute are to be taken in their ordinary and familiar signification and import, and regard is to be had to their general and popular use; for *jus et norma loquendi* is governed by usage; and the meaning of words, spoken or written, ought to be allowed to be as it has constantly been taken to be—*loquendum est ut vulgus.*"

Ibid., p. 703—

"Where the Legislature has used words of a plain and definite import, it would be very dangerous to put upon them a construction which would amount to holding that the Legislature did not mean what it has expressed. The fittest course in all cases where the intention of the Legislature is brought into question, is to adhere to the words of the statute construing them according to their nature and import; in the order in which they stand in the act of Parliament."

The determination of the judges in Edrick's case is noticed by Dwarris, and their language adopted by Sedgwick, Kent and other commentators as deserving attention. They held that "they ought not to make any construction against the express letter of the statute; for nothing can so express the meaning of the makers of the act as their own direct words, for *index animi sermo.* And it would be dangerous to give scope to make a construction in any case against the express words, when the meaning of the makers doth not appear to the contrary, and when no inconvenience will thereupon follow, and therefore *a verbis legis non est recedendum.*"

This doctrine has been repeatedly acknowledged and applied by this and the other Federal courts. In the case of the United States

vs. Warner (4 McL., 468), it is laid down as "a rule of universal ap- "plication in the construction of statutes that courts must be gov- "erned by the words used to express the intention of the Legislature "when they are free from all uncertainty and ambiguity."

Justice Story in speaking of revenue and duty acts, says:

"They are to be construed according to the true import and meaning of their terms; and when the legislative intention is ascertained, that and that only is to be our guide in interpreting them. We are not to strain to reach cases not within their terms, even if we might conjecture that public policy might have reached those cases; nor, on the other hand, are we to restrain their terms so as to exclude cases clearly within them, simply because public policy might dictate such an exclusion" (U. S. *vs.* Breed, 1 Sumner, 159).

The effort of the plaintiff in error appears to be to substitute for the literal and lexicographical and popular meaning of the phrase "all printed matter" some supposed mercantile or commercial signification of these words, and to render subservient to that signification what was clearly accordant with the etymology of the language of the statute, with the essential purposes and action of the government, and with the widespread, if not the universal, understanding. In instances in which words and phrases are novel and obscure, as in terms of art, where they are peculiar or exclusive in their signification, it may be proper to explain or elucidate them by reference to the art or science to which they are appropriate; but, if language which is familiar to all classes and grades, and occupations, language, the meaning of which is impressed upon all by the daily habits and necessities of all, may be wrested from its established and popular import in reference to the common concerns of life, there can be little stability or safety in the regulations of society.

Maillard *v.* Lawrence, 16 How., 256.

And in the case of Binns *v.* Lawrence, 12 Howard, 17, this court held: "That wherever the will or intention of the law-making power is declared, in plain and unequivocal terms, that will or intention must be followed—absolutely followed. It would not be admissible, under such circumstances, to attempt a control or modification of that will by speculations of policy or by facts or opinions derived *aliunde*, as such a proceeding would, in effect, operate a repeal of the positive, or the abrogation of a superior, power, by what were the just and regular subjects of its operation. Where a statute may be ambiguous in its language, or may have reference to facts or conclusions dependent on usage, the influence of opinion, or the proof of established usage, may be proper, or even indispensable, in fixing the just interpretation of the law, but it is only in instances like these last mentioned that such a rule of interpretation can be tolerated."

Third Point.

General words not to be restricted.—It is also a well settled rule, in the interpretation of statutes, that when the words used are general, limitations or restrictions not absolutely called for by the sense are not to be tacked on. The words of the statute under consideration are general and sweeping—"all printed matter."

In Lottimer *v.* Smythe, (17 Int. Rev. Rec., 12,) the court held that when general terms are used, the terms are to be taken and applied in their ordinary and comprehensive meaning, unless it is shown * * that they have, in their commercial use, acquired a special and restricted meaning.

And this language has been adopted and approved by this court in Arthur *v.* Morrison, 6 Otto, 108.

Indeed, there seems to be no rule of interpretation so well settled as that herein contended for. In the case of Faw *v.* Marsteller, (2 Ch., 10), this court, in giving construction to the second section of the Act of the Virginia Assembly, 1781, ch. 23, the descriptive words being, "*All* debts and contracts entered into or made in the current "money of this State, or of the United States," say: "In searching "for the literal construction of an act, it would seem to be generally "true that positive and explicit provisions, comprehending in terms a "whole class of cases, are not to be restrained by applying to those "cases an implication drawn from subsequent words, unless that im-"plication is very clear, *necessary* and *irresistible*."

And in the case of United States *v.* Coombs, (12 Pet., 72, at page 80 of the opinion,) the court holds: "Upon general principles of in-"terpretation, where words are general, the court are not at liberty "to insert limitations not called for by the sense, or the objects, or "the mischiefs of the enactment."

Dwarris on Stats (*p.* 773), in referring to construction of particular words, says: "All" *qui omne dicet, nihil excludit, generale dictum, generaliter est intelligendum.* That is to say that where the term *all* is employed, nothing is to be excepted.

PART II.

The plaintiff in error, while admitting that these two words, *printed matter*, are, in their ordinary and plain meaning, sufficiently comprehensive to embrace Decalcomanie pictures, will probably maintain that their use, in conjunction, and their position in the sentence, call for a restricted interpretation. The court will perceive that this at once raises a doubt on which two minds might honestly differ, perhaps the same mind be equally balanced.

Waiving, therefore, the above considerations, and admitting, for the argument, that the term "printed matter" is of doubtful import, let us apply the usual tests resorted to by the courts to arrive at the true interpretation of doubtful statutes.

First Point.

Usage.—To 'try the right intendment of a law,' Lord Coke's usual course is, first, to consider the true import of the words themselves, and then to refer to the old books and authors that wrote soon after the passing of the law. And this, he says, is *benedicta expositio*, a good and sound construction, when our ancient authors and our year books together with constant experience do agree (2 Inst. 11, 136, 181).

It is in this view, and chiefly, if not solely, with the object of discovering, if possible, the intention of the legislator, that when the words of an act are obscure or doubtful, considerable stress is laid upon the light in which it was received and held by the contemporary members of the profession; *contemporanea expositio est fortissima in lege.*

"Great regard" says Lord Coke, "ought in construing a statute, to be paid to the construction which the sages of the law, who lived about the time or soon after it was made, put upon it; because they were best able to judge of the intention of the makers at the time when the law was made (Dwarris Stats., 693).

Hence it has become a well established rule that in the construction of statutes, the sense which the contemporary members of the profession had put upon them is deemed of some importance according to the maxim that *contemporanea expositio est fortissima in lege* (1 Kent Com., 464). And when the meaning of a statute is dubious long usage is the just medium to expound it by; for *jus et norma loquendi* are governed by usage. "The meaning of things spoken or written must be as it hath been constantly received to be taken from common acceptation" (Sheppard *v.* Gosnold, Vaugh., 169).

Official interpretation.—It is in deference to this doctrine that the federal courts have repeatedly, in the construction of doubtful enactments adopted the interpretation put upon them by the officers charged with their administration; those for whose conduct and guidance they were enacted, and who were first called upon to give them operative significance.

In the case of the Recorder (1 Bl. C. C., 218), it was held that the Government, if not all other parties, were precluded by that long usage and practical construction of the law, from questioning its correctness, and disturbing the course of its execution. "Admitting" say the court, that, on the face of the act, it is doubtful whether the trade now attempted to be prosecuted can be allowed; or even conceding that the intention of the statute to the contrary is manifest, and that the Treasury Department misapprehended and misinterpreted its provisions in the instructions of September, 1817, we think the settled rules of law, and the principles governing the interpretation of human language, with whatever solemnity, and to whatsoever purpose it is employed, require us to adopt and adhere to the contemporaneous construction.

The cases in which this court have expressed similar views are numerous: Some of the most forcible are the following:

Edwards, Lessee *v.* Darby (12 Wheat., 206).

"In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act "under the law, and were appointed to carry its provisions into effect "is entitled to very great respect.

United States *v.* State Bank of North Carolina (6 Pet., 34). "It "is not unimportant to state, that the construction which we have "given to the terms of the act, is that which is understood to have "been practically acted upon by the Government, as well as by individuals, ever since its enactment.

* * * * * * * *

"We think the practice was founded on the true exposition of the "terms and intent of the act, but if it were susceptible of some "doubt, so long an acquiescence in it would justify us in yielding to "it as a safe and reasonable exposition."

Union Ins. Co. *v.* Hoge, (21 How., 35).

"The practical construction of this Act of 1849, by the public "officers of the State, including the Attorney General, who were "required to supervise the preliminary steps made necessary to the "organization of the company, and to certify that it had con"formed to the provisions of the act, and the latter officers especially, "that the charter was in accordance with it, is deserving of considera"tion, * * * although this practical construction cannot be ad"mitted as controlling, it is not to be overlooked, and perhaps should "be regarded as decisive in a case of doubt, or where the error is not "plain."

See also, 10 Opin. Attys. Genl., p. 55, 3 Pick, 517.

Peabody *v.* Stark, (16 Wall., 240.)

In the absence of a clear conviction on the part of the members of the court on either side of the proposition, in which all can freely unite, we incline to adopt the uniform ruling of the office of the Internal Revenue Commissioner, holding that the distiller is not liable under the eighty per cent. clause until a copy of the survey in which the tax is assessed has been delivered to him as provided in section ten. It is made to appear to us in a very satisfactory manner, that such has been the unvarying rule of that office since the act went into effect, and while we do not hold such ruling as in general obligatory upon us, we are content to adopt it in this case, for the reason already mentioned, as well as for its obvious fairness to the government, and to the distiller.

Rulings of Treasury Department.—Applying this doctrine to the case in hand, we find that the Secretary of the Treasury has uniformly interpreted the term "printed matter" in the strict and unlimited grammatical sense of the words. This question has been repeatedly before the Treasury Department, since the term was first introduced

into the tariff, (Act of March 2, 1861,) and the term has invariably been held to include all printed objects, by whatever process printed, and not to be limited or restricted in meaning to "type" matter or to "reading" matter. The provision first appears in the Act of March 2, 1861, at sect. 18. It is not found in the Act of 1846. The provision of that act for printed articles, was contained in Schedule G, and was as follows: "Books printed, magazines, pamphlets, periodicals and illustrated newspapers bound or unbound, * * * engravings or plates * * * maps and music and music paper with lines.

Under this law the question arose as to the rate of duty on these lithographic prints and the department, ruled March 25, 1859, as follows:

"It is not deemed material to decide whether a lithographic "*print*" can in strict propriety of language be called an "engraving," looking to the manner in which they are respectively executed. The terms "engravings or plates bond or unbound" in Schedule G, as popularly used, or in commercial parlance are believed to be broad enough to embrace both lithographic *prints* and engravings."

And again May 17, 1860. "The articles in question are thin pasteboard cards of various sizes, on which is *printed* matter illustrated by colored engravings. The engraving, it would appear, is the most expensive part in the manufacture of these cards, and their classification will be regulated by that fact. Being regarded as engravings, and the colors being impressed in the process of *printing* and not afterwards added, the articles in question will, in accordance with the previous decisions of the department on this subject fall within the classification in Schedule G, of engravings or plates, bound or unbound."

And again January 25, 1861: "The sample submitted shows the article to be a lithograph colored in oil, and is so admitted by the parties. It cannot in the opinion of the department, be regarded as a "painting" within the meaning and spirit of the law; nor is it, it is believed, so known in the trade, but it must be held to be a "colored lithograph," and, as such liable to duty at the rate of 8 per cent., under the classification in Schedule G, of "engravings or plates."

Now, then, immediately after these decisions came the act of March 2, 1861, wherein the provision for printed matter is first introduced. It is in the following connection: "On all books, periodicals and pamphlets and all *printed* matter and illustrated books and papers." And immediately the department recognized the propriety of thereafter classifying lithographic prints under this designation instead of assimilating them to engravings.

"The articles in question are lithographic showbills or handbills and are designed as advertising posters. The handbill shows the manufacturing building, the business, the location and the names of the proprietors. I concur with you in the opinion expressed in your report on a further consideration of the matter, that these articles are not embraced in either of the above designations, but are liable on the entry to a duty at a rate of 15 per cent. as '*printed* matter'

under section 18 of said act, the work being executed by the press alone" (*Letter to Collector at New York, October* 9, 1861).

Next comes the act of June 30, 1864.

In the previous tariff all these articles, books, newspapers, engravings, maps and charts had been provided for at the same rate of duty and in the same schedule or section, but not in juxtaposition. The alphabetical order rather being preferred. The act of 1864 changed this. It purports to group articles of a kindred nature and material into classes. 1st. Teas, coffees, sugars; 2d. Liquors; 3d. Metals; 4th. Woven fabrics, which are again subdivided according to material; cotton, linen, wool, silk; 5th. Glass and earthenware; 6th. Drugs and chemicals; and lastly follow miscellaneous articles, grouped also into classes according to kind. The significance of this arrangement of the act of 1864 has been commented upon by the Supreme Court on several occasions, particularly in the case of Smythe *vs.* Fiske (23 *Wal'.*, 374).

Now, then, in view of these decisions of the Secretary of the Treasury and the general acceptance and acquiescence of the business community, Congress passed this Act of 1864 grouping articles together into classes. It made no new provision for lithographic prints, concerning which so many questions had arisen. But in the 13th section it grouped into one class all matter which is printed, whether from types or plates of wood, metal or stone, and the term "printed matter" was introduced by way of general supplement to the specific enumerations. The section reads: "On books, periodicals, pamphlets, blank books, bound or unbound, and all printed matter, engravings, bound or unbound, illustrated books and papers and maps and charts." Thus we see "all printed matter" supplements the specific enumeration of books, engravings, maps and charts. These words in this connection bear the same relation to the section that the general language in the other sections bears to the specific enumerations therein contained; they are used in supplement of the whole subject.

The Treasury Department was again called upon to give construction to this provision for printed matter, as it stood in the Act of 1864, and ruled as follows:

"Engraved slipper patterns are dutiable, not as manufactures of paper, but under the head of "all printed matter, engravings, bound or unbound, &c." (*Letter to Collector of Boston, January* 19, 1869.)

And again: "Certain blank labels should, on importation, be classified under the 13th section of the act of June 30, 1864, which provides: on all printed matter, engravings, bound or unbound, illustrated books and papers and maps and charts, twenty-five percentum *ad valorem* (*Letter to Collector of New York, May* 28, 1869).

And again: "Printed and figured paper labels cannot be classified under the tariff acts as 'manufactures of paper,' but are liable to duty at the rate of twenty-five per centum *ad valorem* under the provisions of the 13th section of the Act of June 30, 1864, as "*printed* matter, engravings, &c." (*Letter to Collector at New York, October* 15, 1870).

On the question whether lithographic prints were entitled to the reduction of ten per cent. under tho Act of 1872, the Secretary ruled: "Lithographic *prints* are entitled to a reduction of ten per centum duty under the provision in the 2d section of the Act of June 6, 1878, for "books and other printed matter not herein provided for" (*Letter to Collector at New York, August* 30, 1872).

Again (Letter to Coll, at New York, March 7, 1873). "It was "held by the department thet certain *printed* paper ornaments for "trunks, etc., should be classified as '*printed* matter,' dutiable at "twenty-five per cent. *ad valorem*, less ten per cent., under the pro- "visions of Section 13, of the Act of June 30, 1864; and Section 2, "Act, June 6, 1872, and not as 'manufactures of paper.'"

Finally the Secretary of the Treasury, in a letter to the Appraiser at New York, dated September 17, 1874, reviewing the whole question of the distinction to be made under the Rev. Stats., between "printed matter" and manufactures of paper, says: "The rates imposed now are, therefore, on *printed* matter, twenty-five per cent. *ad valorem*, without reduction; on engravings, *prints, printed* figures, and illustrations, *printed not from types*, but from designs or plates, whether colored or uncolored, twenty-five per cent. *ad valorem*, without reduction of ten per cent. * * * The distinction between "manufactures of paper" and engravings, or articles assimilated to engravings; *prints*, or articles assimilated to *prints: printed* matter or articles assimilated to printed matter, is somewhat difficult, but it is the intention of the Department to construe such classification liberally, and not to impose the duty prescribed for manufacturers of paper on articles other than those which constitute a change in the form of the paper. *Printing* on it with type, or by impression or design through the use of plates does not effect such change."

And, lastly, in a letter to Coll. at New York, November 17, 1874, he says: "All articles of paper which have been changed in essential form, or have been embossed, stamped, moulded, or compressed together by sheets, are manufactures of paper; also heavy glazing or pasting, either with or without *printing* of colors or figures, would change printed matter to manufactures of paper. The samples No. 1 spool labels and No 2 embroidery patterns are *printed* matter, more nearly than manufactures of paper."

Now then, admitting that there is some doubt as to the application of the term printed matter, to these pictures this court will adhere to the construction given to the term by this long course of rulings of the officers appointed to administer the law.

Second Point.

Subsequent Legislation.—Indeed, whether these rulings of the Treasury Department were correct or not, they have been recognized, adopted and acted upon by Congress in its subsequent legislation.

In the Act of 1864, the term "all printed matter" is placed in juxtaposition to engravings, wherewith, in the Act of 1861 it had no connection; its position is disturbed, and it is made to supplement not only books, etc., but also engravings, maps and charts. The Act of 1861, read, "all books, periodicals and pamphlets, and *all printed matter*." The Act of 1864 reads "Books, periodicals, pamphlets, *blank books bound and unbound*, and all printed matter, engravings, etc., etc."

And in other acts where Congress desired to limit the term to reading matter, it has done so by words of appropriate limitation.

In the Act of July 1, 1862, Ch. 119, sec 75 (12 Stat., 466), where Congress intends to limit the meaning of printed matter to reading matter, we find it using appropriate words of limitation. "Provided, "further, that printed books, magazines, pamphlets, newspapers, "reviews, and all other *similar* printed publications &c."

And, again, in the Act of June 30, 1864 (Int. Rev.), Ch. 173, sec 94 (13 Stat., p. 267). "All printed books, magazines, pamphlets, reviews, "and all other *similar* printed publications, except newspapers."

Act, July 13, 1866, Ch. 184, sec. 10 (14 Stat., p. 149, top line) distinctly recognizes the interpretation previously given to the term by the Treasury Department, when it speaks of "books, maps, charts, "and *all printed matter*." This is certainly a plain admission that there is other printed matter, which is not similar to books, magazines, pamphlets and reviews.

It was within the power of Congress, in enacting the revision, to have inserted the word "similar" between "all" and "printed" in this section. Its failure to do so in the face of the ruling, which then obtained in the Treasury Department, should be considered as conclusive.

Third Point.

Noscitur a Sociis.—In the construction of a doubtful statute, and especially of a revenue law purporting to provide for articles in *classes*, the courts will consider the fitness of things, and will place an article with those of a kindred nature rather than with others to which it bears no resemblance.

It is one of the best settled rules of interpretation of revenue laws that the articles, grouped together, are to be deemed to be of a kindred nature, and of kindred materials, unless there is something in the context which repels that inference. (Adams *v.* Bancroft, 3 Sumn., 385).

In Arthur *v.* Sussfeld (the spectacle case), this court expressly places its decision on the connection in which the component materials (glass and steel) are found in the statute. The court (6 Otto, p. 130)

say: "And we prefer to place our opinion upon the connection in which the different articles are found in the statute. Neither in the general use of language or in commercial designation would it be understood that the unconnected expression, "of which steel is a component part," was intended to embrace spectacles? Steel may or may not form a part of the spectacles. The article will be as perfect without steel as with it. On the other hand the terms, "pebbles for spectacles, and all manufactures of which glass shall be a component material," naturally connects the glass manufacture with the spectacles. There could be no spectacles without them. The colorless crystals in spectacles, termed pebbles, and the manufactures of glass used in spectacles, embrace the same idea, to wit, of pebbles or glass for spectacles. The section, we think, was intended to impose a duty of forty per cent. on those substances used in the manufacture of spectacles to aid the sight, and which are therein described as pebbles or as glass. *The use of spectacles are to aid the sight. The pebbles and the glass are the materials which effect that purpose. The steel is incidental or auxilliary merely, and Congress intended to embrace spectacles under this appropriate designation.*"

Applying this test to these pictures, to which of the two provisions of the tariff now under consideration are these pictures more nearly allied? The former provides for—

"Books, periodicals, pamphlets, blank books, bound or unbound, and all *printed* matter, engravings, bound or unbound, illustrated books and papers, and maps and charts."

The latter provides for—

"Paper, * * * * manufactures of, or of which paper is a component material, * * * sheathing paper, * * * paper boxes and all other fancy boxes, * * * paper envelopes, * * * paper hangings and paper for screens or fire-boards."

Under which of these provisions shall we classify these pictures, with literary works, illustrated books and papers, maps, charts and engravings or with paper boxes, envelopes and paper hanging? The former is a class of objects intended to impart some idea to the mind—to be read or to be hung up for contemplation and instruction. The material of which they are composed enters not into consideration; the lesson might be impressed on canvas, wood or metal without altering its value or nature. These characteristics lie altogether in the words spoken, the information imparted or the skill with which the subject is represented. These constitute the whole value—the material goes for nought—it is a mere adjunct or mere medium whereon is realized and perpetuated a thought, an idea. On the other hand is a class of articles intended for practical manipulation in household or business purposes; their value is determined by the material of which they are composed; by the strength, durability or fitness of the paper for the particular purpose.

The pictures in question are not intended for any such purposes; they are intended to impart an idea; and whether they are eventually hung up in frames, or transferred to wood or glass, they always remain what they now are, representations of animals, flowers, faces and the like. Articles like these cannot be called manufactures. They do

not belong to that class. A painting is not a manufacture of canvas; a statue is not a manufacture of stone or metal; nor are pictures manufactures of paper. They are subjects, works, representations, matters.

In the former class the printed figure is the sole element which determines the character and uses: the paper is a mere adjunct; in the latter class the paper is the chief element in determining the character and uses of the article, the printed figure, if any, becomes a mere adjunct of no consideration.

Under which of those provisions do these pictures more properly belong? Placed under the former, they find their natural companions and allies with engravings, maps and charts. *Noscitur a sociis.* Placed under the provision for manufactures of paper they stand alone; they are utter strangers, to paper boxes, paper fans, fire screens, envelopes, &c., &c.

Fourth Point.

Benefit of doubt to importer.—It has been held in England (Hubbard *vs.* Johnston, 3 Taunt., 177) that statutes to regulate the conduct of merchants, must be perfectly clear and intelligible to persons of their description, for otherwise they would be snares. Where clauses, therefore, are obscure, or susceptible of two interpretations, the courts, as between the Government and the merchant, lean in favor of the latter.

The rule adopted by Story (Adams *v.* Bancroft, 3 Sumn., 385), was that duties are never imposed upon the citizens upon doubtful interpretations; for every duty imposes a burden upon the public at large, and is construed strictly, and must be made out in a clear and determinate manner from the language of the statute. And in (Sewell *v.* Jones, 9 Pict., 412), it is declared that "statutes which levy an excise or tax must be construed strictly." And the reason given is that "we are to suppose the Legislature intended nothing beyond what their language, in fair legal construction will indicate. If the terms of their enactment have not embraced their object, the power is with them, by explanatory or additional acts, to extend them."

In the Second Circuit, Judge Betts, in the case of Hoyt *vs.* Hall (reported in Executive Documents, 1st Session, 26th Congress, Vol. II., 1839–40, Doc. No. 44, page 33) says: "If, then, these articles might be indifferently placed under either class, and are known in trade as well by the one name as the other, that then they are to be subjected to the lesser duty; because, if the description by which the impost is laid is ambiguous or susceptible of two interpretations, equally conformable to its general import, that one is to be adopted which is least burdensome to individuals. It is not to be supposed

that Congress designed to impose the higher rate of duty where different ones may apply to the same subject, unless they express that intent by plain and definite language."

These considerations seem to establish the general rule that in every case of doubt revenue statutes are to be construed most strongly against the Government and in favor of the subject or citizen, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import (United States *vs.* Wigglesworth, 2 Story, 373).

PART III.

THE ALLEGED ERROR.

In considering this portion of the case, we will examine: 1st. The judge's refusal to submit the facts to the jury (2d and 3d exceptions), and 2d. The direction to the jury to find a verdict (1st and 4th exceptions).

First.—There being no disputed fact in the case, the court was bound to take it from the jury.

The proof was that these pictures are "entirely printed;" that they are commercially known as "prints;" that their peculiar use is for pictures (*fols.* 16 *and* 17).

After the plaintiffs had rested their case, the counsel for the defendant announced that he had no evidence to offer; and thereupon the court, considering that the legal effect of the evidence warranted a verdict for the plaintiffs, told the jury in an absolute form to find for them. This was correct practice where there was no evidence at all to contradict or vary the case made by the plaintiffs; and the only question for review here is, whether or not the court mistook the legal effect of the evidence.

This has been repeatedly recognized by this court as the correct practice. In fact, this court has gone further, holding that a mere *scintilla* of evidence is not sufficient to warrant the court in giving the case to the jury. There must be a substantial disputed fact.

In the case of Schuchardt *v.* Allen (1 Wall, 369) the court holds: "When there is no dispute about facts, and the law arising upon them is conclusive against the rights of the plaintiff to recover, it is proper for the court so to instruct the jury. If the evidence be not sufficient to warrant a recovery, it is the duty of the court to instruct the jury accordingly. This is equivalent to a demurrer to the evidence, and such an instruction ought to be given whenever the evidence is not legally sufficient to serve as the foundation of a verdict for the plaintiff. This practice has in many of the States superseded the ancient practice of a demurrer to evidence. It answers the same purpose, and should be tested by the same rules. A demurrer to

evidence admits not only the facts stated therein, but also every conclusion which a jury might fairly and reasonably infer therefrom."

So in Improvement Co. *v.* Munson (14 Wall, 448): "When a prayer for instruction is presented to the court, and there is no evidence in the case to support such a theory, it ought always to be denied, and if it is given, under such circumstances, it is error: for the tendency may be, and often is, to mislead the jury by withdrawing their attention from the legitimate points of inquiry involved in the issue. Nor are judges any longer required to submit a question to a jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such a character that it would warrant the jury in finding a verdict in favor of that party. Formerly it was held that if there was what is called a *scintilla* of evidence in support of a case, the judge was bound to leave it to the jury, but recent decisions of high authority have established a more reasonable rule, that in every case, before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed." (See also Pleasants *v.* Fant, 22 Wall, 116).

In Toland *v.* Sprague (12 Pet., 300), the court (at p. 326) hold: "It was argued that the question whether there was a stated account or not, was a question of fact for the jury; and that therefore the court erred in taking the question from them, and telling them that this was a stated account. The answer is that there was no dispute about the facts; and that the plaintiff claimed the balance of the account as being the precise sum due to him. It was therefore competent to the court to instruct the jury that it was a stated account."

Wiggins *v.* Burkham (10 Wall., 132), they say: "Where the facts are clear, it is always a question exclusively for the court. The point was so ruled in this court by Toland *v.* Sprague. Where the proofs are conflicting, the question is a mixed one of law and of fact."

In the Commissioners of Marion County *v.* Clark (4 Otto., 278), they say: "Decided cases may be found where it is held that, if there is a scintilla of evidence in support of a case the judge is bound to leave it to the jury; but the modern decisions have established a more reasonable rule."

See also The People *v.* Cook, 4 Selden, 75.
Bessen *v.* Southard, 6 *Ib.*, 240.

In this case there was no dispute about the facts, no conflict in the evidence, and no impeachment of witnesses; the Circuit Judge was therefore right in assuming to himself, to pronounce upon the legal effect of the evidence. The only question to be reviewed here is whether the instruction given was correct. This we shall proceed to consider.

Second Point.

This branch of the case is to be viewed in the light of the defendant's demurrer to the evidence, for such was the legal effect of his request for a direction in his favor. The request was made in pursuance of a practice which, in the State of New York, has succeeded the practice of a demurrer to the evidence. It answers the same purpose; and, as this court has declared (Parks *v.* Ross, 11 How., 362), "should be tested by the same rules." A demurrer to the evidence admits not only the facts stated therein, but also every conclusion which a jury might fairly or reasonably infer therefrom.

The following cases indicate very clearly the uniformity with which this court has adhered to this doctrine.

Chinoweth *v.* Haskell's Lessee, 3 P., 92: "The defendants in the District Court having withdrawn their cause from the jury by a demurrer to evidence, or having submitted to a verdict for the plaintiffs, subject to that demurrer, cannot hope for a judgment in their favor, if, by any fair construction of the evidence, the verdict can be sustained. If this cannot be done, the judgement rendered for the defendants in error must be reversed."

Thornton *v.* Bank of Washington, 3 Pet., 36. "The party who demurs to evidence, seeks thereby to withdraw the consideration of the facts from the jury, and is therefore bound to admit, not the truth of the evidence as given, but every fact which that evidence may legally conduce to prove in favor of the other party.'

See also United States Bank *v.* Jones, 11 W., 171.
Pawling *et al v.* United States, 4 C., 219.

It is hard to conceive on what theory the plaintiff in error bases his claim. If it be that the term "printed matter" includes only printed "letters constituting language," it was his duty, in the court below, to limit the term to that meaning by some evidence. If it be true that the term has a restricted meaning in trade or commerce, or otherwise, it was susceptible of proof. This is the only way that a term, general in its nature, can be restricted. This court will not now restrict the meaning of these words on theories or arguments.

Or is his claim based on the ultimate use to which these pictures are to be applied? It seems to the defendants in error that their ultimate destination has no bearing on the rate of duty to which they are to be subjected. The question for the court to decide is, What are they in their imported state? Is cotton or woolen cloth, for instance, to pay the duty chargeable on wearing apparel, because it is ultimately to be used as such? Even if this argument could be tolerated, is the plaintiff in error in any better position? Does it not appear, if this branch of the evidence is to have any weight, that these pictures would then be dutiable as engravings? They are similar in material, quality, texture, and the uses to which they are to be applied. They are landscapes, scenery and other figures printed from oil stones on to paper (*fol.* 15). They are known in trade and com-

merce as prints (*fol.* 16), which is but a synonym for engravings (*See Webster, McElrath, and Homans, supra*). Their use is peculiarly for ornament as pictures (*fol.* 17).

Or does the plaintiff in error claim that the position of the term in the sentence restricts it to reading matter? This argument will not hold. The term is not in juxtaposition to "books, pamphlets," &c. The words "blank books, bound and unbound," intervene, and the word "engravings" &c., immediately follow. According to the well known rule of interpretation these general words must be taken to qualify as well what precedes as what follows them. Dwarris on Statutes, *p.* 704, says:

"If words are in the middle of a sentence and sensibly apply to a particular branch of it, can they be extended to that which follows? Agreeably to reason, and in grammatical construction it should seem not; but as statutes are read without breaks and stops, it is not at any time clear that words belong to any particular branch of a sentence. It must be collected from the context to what they relate, and they are often, as will be seen, to be read distributively, *reddendo singula singulis.*"

The enumeration which follows the term "all printed matter" is as much printed matter as the enumeration which precedes it. There is nothing therefore in the position of the term in the sentence which requires the court to restrict its meaning to the preceeding enumeration, and therefore the term "all printed matter" must have its full scope on the whole sentence.

If Congress had desired to restrain or limit their application, apt words were at hand which it might have used, as we have seen it has used in other acts it could have provided for books, pamphlets, etc., and all *similar* printed matter, or all *such* printed matter, or all *like* printed matter.

But Congress intended this term, both in the Act of 1864, and in the revision, to supplement the whole sentence. The best proof of this is to be found in the fact that the provisions of former acts under which these pictures might properly be assessed with duties, are dropped from the Tariff Acts, enacted after the Act of March 2, 1861. For example, the provisions for "pictures and prints," "engravings or plates," "engravings or prints," which are found in former duty acts do not again recur.

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